

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SECOM-D-323

15 August 1980

MEMORANDUM FOR: Chairman, APEX Steering Group

FROM:

SECOM Member

SUBJECT: Review of SIGINT For
Incorporation in APEX

1. Background: Steps toward protecting SIGINT information under the APEX control system have occasioned much discussion and several written proposals (e.g., NSA Member APEX Steering Group memoranda dated 27 May and 12 August 1980). (U)

2. Facts Bearing on the Issue:

a. PD/NSC-55 dated 10 January 1980, conveys Presidential approval for establishment of the APEX Program, which "conforms with Executive Order 12065 and will be implemented...by the Director of Central Intelligence..." Thus, classification and compartmentation of information under the APEX system must be in conformance with E.O. 12065. (C)

b. E.O. 12065 dated 28 June 1978, provides that:

(1) Only classified information may be protected by special access programs (i.e., compartments). (Section 4-201)

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(2) Specific criteria govern the level of classification which may be applied to information. (Sections 1-102, 1-103 and 1-104). Reasonable doubt on the need for or level of classification shall be resolved in favor of the less restrictive treatment. (Section 1-101).

(3) Compartments may only be created or continued on certain specific showings. These include demonstrated insufficiency of "normal management and safeguarding procedures" (i.e., the collateral classification and security system) in limiting need-to-know or access to the information proposed for compartmentation. (Section 4-202).

(4) All compartments shall be reviewed regularly in the light of these criteria and showings. (Section 4-203) (U)

c. The White House Fact Sheet accompanying E.O. 12065 states (section 12) that "at present, there are hundreds of 'special access' programs (also called 'compartments') which restrict access to highly sensitive classified information. These programs are expensive to maintain and may prevent or delay access by policy officials who really need the information. In addition, the proliferation of these programs has reduced their protection value." (U)

d. The Statement by the President accompanying E.O. 12065 states that "While some material must be classified, the government classifies too much information, classifies it too highly, and for too long. These practices violate the public's right to know, impose unnecessary costs, and weaken protection for truly sensitive information by undermining respect for all classification. (U)

3. Discussion: Since all Intelligence Community agencies are subject to E.O. 12065, the provisions and criteria of that order must be applied to all information being considered for APEX compartmented protection. Existing compartmented procedures may not be carried forward automatically for intelligence information without individual and specific review of information elements against the Order's criteria. This review requirement supercedes other requirements in administrative documents which implement agreements with foreign governments bearing on intelligence security and entered into before E.O. 12065. (U)

The review process must result in a listing of discrete information sets and sub-sets whose bounds are readily and uniformly understood throughout the Community, and for which specific classification guidance is provided. The guidance in this case must satisfy E.O. 12065 criteria and specify the type and degree of compartmented and classification protection required (e.g., TOP SECRET Codeword, SECRET HVCCO, SECRET, CONFIDENTIAL, UNCLASSIFIED) and state the period when declassification review must be conducted (e.g., review 20 years). An example of guidance providing the requisite degree of specificity is USAFINTEL 201-6, dated 1 April 1980, "Special Intelligence (SI) Classification Guide (U)." Since items of such guidance are open to challenge under E.O. 12065, originators should be prepared to show how and why unauthorized disclosure of data elements would result in "identifiable," "serious," or "exceptionally grave" damage to the national security in the respective cases of information proposed for CONFIDENTIAL, SECRET or TOP SECRET classification levels. Further, they should be prepared to show why information they propose for compartmented protection cannot be adequately protected by the collateral classification system (Section 4-202(a) of E.O. 12065), and how compartmentation will satisfy the other criteria of the Order (Sections 4-202(b) and (c)). (U)

To illustrate the type of analysis required, set forth below are questions on a selected few sample items included in enclosure (1) to the 12 August 1980 memorandum by the NSA Member to the Chairman, APEX Steering Group. (U)

a. Item I.A.8, Page 1 - Is not the description given so broad as potentially to overlap many other items, and thus not be susceptible of ready and uniform application? Further, do not the stated alternatives of compartmenting this data in either the ALPHA subcompartment or the operational compartment risk varying applications of security protection based on subjective judgments? (U)

b. Item I.C.2, Page 2 - What identifiable damage to national security would result from unauthorized disclosure of a statement such as "John Doe, Social Security Number 123-45-6789, is indoctrinated for Cat.III COMINT"? This would be without explanation of what Cat. III COMINT includes, and also without identification of what John Doe is supposed to do based on his access. If this limited amount of information is deemed to require some degree of security classification, how does it then meet the criteria of Section 4-202 of E.O. 12065 for compartmentation protection? (U)

c. Item II.B.4, Page 5 - How can this guidance be meaningfully applied without specifying characteristics of the various systems so that personnel involved can know whether to mark the information as classified collateral data (and at what level), ALPHA subcompartment, or operational compartment? (U)

d. Item II.E.6, Page 8 - How does the mere association with the USSS of Russian language capable personnel require security protection, and would such guidance be consistent with that stated in items II.E.1 and 2 above? (U)

e. Item II.G.4, Page 9 - If both COMINT and Special Intelligence are unclassified terms, how is it that equating the two meets E.O. 12065 tests for security classification? (U)

f. Item VI.B, Page 14 - Does the stated range from unclassified to operational compartment provide meaningful guidance to users on how they should protect this sort of information? (U)

4. Recommendation: NSA should be tasked to make de novo reviews of their sensitive information by discrete, clearly and uniformly identifiable elements against the classification and compartmentation criteria of E.O. 12065 and propose specific classifications and compartmentation controls to each such element. It is further recommended that the results of the review be expressed in a form similar to the classification guidance in USAFINTEL 201-6, dated 1 April 1980. Finally, it is recommended that the proposed SIGINT classification and compartmentation guidance be reviewed by the APEX Steering Group against the criteria of E.O. 12065, and that when agreement is reached in that regard the guidance be approved for Community use. (U)

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